

11 SCOTT KOLLER,

12 No. C 14-02400 RS

13 **ORDER DIRECTING THE PARTIES
TO MEET AND CONFER**14 v.
15 Plaintiff,16 Defendants.
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18 DEOLEO USA, INC. and MED FOODS,
19 INC.,20 This is a case concerning the labeling and contents of products sold by defendants Deoleo
21 USA, Inc. and Med Foods, Inc. under various brand names and labels as “extract virgin olive
22 oil.” On July 17, 2014, defendants moved to dismiss the complaint in its entirety pursuant to
23 Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which
24 relief can be granted. Among other grounds for dismissal, defendants argue the complaint is
25 implausible because plaintiff claims certain of the challenged products are bottled in clear glass
26 that allows the oil to degrade when, in fact, those products are bottled in green glass, which
27 plaintiff himself avers protects against such degradation. Along with his response to the motion,
plaintiff filed an “errata” to the complaint, adding an additional challenged product to the
complaint and changing the definition of “Mock EVOO Products” as defined in the complaint.28 No. 14-cv-02400 RS
ORDER

1 According to defendants, these changes were an attempt by plaintiff to overcome defendants'
2 argument concerning packaging. Defendants now move to strike the errata in its entirety as an
3 impermissible attempt to amend the complaint without consent or leave to amend.

4 Without deciding the motion to strike, it does not serve the aim of judicial efficiency to
5 address the motion to dismiss while there are disputed amendments pending to the complaint that
6 may negate some of defendants' asserted grounds for dismissal. The parties are therefore
7 directed to meet and confer regarding either (1) consent to amend the complaint and withdraw
8 the pending motions without prejudice to defendants refiling a motion to dismiss the amended
9 complaint; or (2) a briefing schedule on a motion for leave to amend. On or before September
10 17, 2014, plaintiff shall file either an amended complaint (with defendants' consent) or a motion
11 for leave to amend. The hearings set for September 11, 2014 on the motion to dismiss (ECF No.
12 14) and October 9, 2014 on the motion to strike (ECF No. 29) are hereby vacated. In the event
13 plaintiff files a motion for leave to amend, the pending motions shall be held in abeyance until a
14 decision is issued thereon.

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16 IT IS SO ORDERED.

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18 DATED: September 3, 2014



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RICHARD SEEBORG
United States District Judge